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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition for Expedited Rulemaking	)	
To Establish Reporting Requirements and	)	RM 9101
Performance and Technical Standards for	)	
Operations Support Systems	)	
	)	

REPLY COMMENTS OF
NETWORK LOGIC LLC

It would appear that the largest impediment to effective competition today is the use of the regulatory arena as a venue for semantic and legalistic wrangling rather than as a marketplace of ideas to formulate effective public policy which achieves the clearly stated goal of Congress in its 1996 reform of telecommunications law: to achieve a free market in telecommunications services without undue disruption to the public network.

Many incumbent carriers appear to misunderstand the nature of free markets, seemingly believing that they, the incumbent carriers, have a reasonable expectation that competition will appear at a time and place and in a form in which they might expect it. To a certain extent, regulators have also, in their reliance upon incumbent carriers for technical data – often biased – to support microscopic, often rather twisted, interpretations of what are generally clearly stated and well-conceived broader regulatory actions, perpetuated this attitude.

These incumbent carriers seem to believe that effective competition from any party other than an existing, incumbent carrier – at most, an established CLEC or IXC – would by necessity disrupt the network. It is regrettable that this obviously self-serving argument appears in some cases to have won regulators to its side.

Effective competition to massive, inefficient, monopolistic incumbent LECs will not come – at least not alone – from massive, inefficient, semi-monopolistic IXCs, nor from the established CLECs, which appear to have largely continued in the lines of business in which they were engaged prior to the passage of the 1996 Act.

Despite what incumbent carriers may wish or may believe, in a free market, competition often takes unexpected forms; familiar elements of an old product are frequently reassembled in ways, for example, made more desirable only by superior marketing or by what might seem to be the most infinitesimal incremental innovation; large companies fall behind in the marketplace buried beneath nothing but their own need for extreme profit margins to support obsolete bureaucracies.

And yet in today's telecommunications regulatory environment, there seems to be a bizarre but often accepted notion that only "normal" or "well-understood" types of competition should be permitted. It is this attitude itself – an attitude which often seems to be shared by regulators – which, we believe, has significantly restrained competition since the passage of the 1996 Act. We will draw examples from the area of Advanced Intelligent Network telecommunications services simply because it is the area with which we are personally most familiar; individuals at other small telecommunications firms have assured me that the problem is not limited as my examples will be.

1) At an industry group meeting, one ILEC representative, clearly intending no harm but merely expressing frustration and surprise, described one small competitor as "attempting to manipulate the regulatory process to let them sell things that nobody ever had in mind." What sticks in this author's memory is the degree of exasperation expressed by the ILEC employee; the statement might as effectively have been "How can they sell that? Nobody ever thought of selling that before!" – to someone with a background in any *other* arena of business, clearly a ludicrous complaint. The regulatory process should *encourage* innovation and selling things that "nobody ever had in mind."

2) The "all triggers to the dialtone provider" position of many ILECs on access to AIN triggers. The ILECs have been ordered to provide access to call-related databases such as the SCE and SMS – these databases allow AIN services to be created. Of

course, such services can't be actually *used* by any customers without *some* type of access to AIN triggers, and since the ILECs can and do provision such triggers on their switches for their own use, the issue is clearly not one of technical feasibility but of business process. However, the ILECs have seized upon evident regulatory misunderstanding of the difference between AIN services running entirely within one carrier's physical network, where there is no technical feasibility issue with regard to triggers, and AIN services with a switch in one carrier's network and a database in another's network, and concocted a position – one with no technical underpinnings, even per the writings of their own personnel – in which AIN services may only be provisioned for subscribers either served from a CLEC's switch or whose dialtone is provided by resale from the ILEC's switch. In response to complaints that this has effectively prevented small firms from innovating in the area of providing AIN services by saddling them with the burden of providing dialtone, a frequent response from the ILEC side of the fence is along the lines of "Well, why *should* you be able to provide AIN services without providing dialtone? Nobody ever envisioned that." The FCC and state regulators should make it crystal-clear, in AIN and of course in other areas, that it *does not matter* whether the ILECs expected a particular type of competition; that's not an advantage which businesses are entitled to have, in a free market.

3) Certain ILECs have offered to provide access to modified service creation environments (SCE's) which have had vendor-supplied functionality removed such that the modified SCE can be used only to create services of the same general functionality as those which the ILEC has already created itself. While by some strange conception of "parity" this might appear to be such, once again it is in fact an attempt to restrain the use of existing functionality in the network to provide innovative, competitive new services. Luckily, this position does not appear to have found widespread regulatory acceptance, but it is typical of the efforts of certain ILECs to further the "no unexpected competition" agenda which regulators should definitively reject.

4) Another interesting tactic which we have seen used to persuade regulators that there is no interest in providing certain types of innovative services is the use of cost studies which estimate demand for particular network elements based upon the ILEC's historical use of them. This is a vicious cycle: tariffs are then issued based upon extremely low estimates of demand, leading to element prices which *prevent* more demand from ever materializing. In some cases, ILECs have performed cost studies so clearly detached from reality that according to these cost studies, the ILECs must by necessity be losing enormous sums of money on their own existing AIN services at the levels at which they have decided to price them. It is our impression that certain ILECs would greatly prefer to abandon the entire AIN technology – if possible, under the guise of having been "forced" to do so by state regulators – than see it used by small competitors to provide innovative services leading to unpredictable market conditions.

we must emphasize once again that these specific examples are given in the area of AIN only because that is the area in which our company is presently engaged and with which we have the most experience; the problem, we feel, is much more general, and other specific examples might be obtained from other small companies working in other areas of telecommunications.

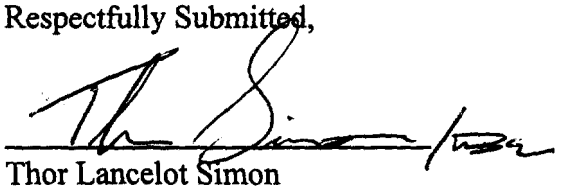
In sum, it is our belief that the most constructive effort which the FCC and other regulatory bodies could undertake in furtherance of effective competition in the telecommunications service marketplace would be to, when evaluating the comments of, information supplied by, and compliance of ILECs with past or present regulatory actions, to bear in mind that the market is in fact behaving as a free market precisely and only *if* events occur in the marketplace which surprise, upset, and even at times have negative economic impact upon the ILECs; if additional legislative action is required to ensure that ILECs open their markets effectively to *all* carriers, under supervision of the FCC, not only other enormous businesses with tens of millions of dollars to spend on legal battles, we urge the proposal and passage of such legislation; when judging the compliance of ILECs with its mandates we urge that the FCC consider, in particular, competition from businesses with less than one-hundredth or one-thousandth the revenues of the ILEC in question, and require the ILECs to undertake initiatives which promote such competition from small, forward-thinking companies which will bring technical and economic innovation to the market.

There are myriad ways in which the ILECs can and do – at times perhaps unwittingly, but at times seemingly quite deliberately – make it fundamentally impossible for small businesses to compete in their principal areas of business, from failure to return telephone calls to requiring data as business case or technical evaluation input which will require weeks of full-staff effort for the smaller company to provide, to the use of enormous teams for technical or business liaison such that scheduling conflicts internal to the ILEC require delays of weeks or months between meetings,

effectively requiring the smaller company to move at the traditional Bell System snail's pace.

What do we recommend that the FCC do to combat this? We recommend that at every opportunity, the FCC force the ILECs to play the game "our" way – in the way of small businesses – and that the FCC judge the ILECs upon their ability to do so, *not* upon their ability to come to understandings with other enormous entities such as the IXCs in ways which are, themselves, anti-innovative and quite possibly anti-competitive.

Respectfully Submitted,



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